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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6 EUREKA DIVISON

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8 HIEP HUY NGUYEN,
9 Petitioner,
10 v.
11 JOSIE GASTELO,
12 Respondent.

13 Case No. 16-cv-5528-NJV (PR)

14 **ORDER OF DISMISSAL**

15 Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant
16 to 28 U.S.C. § 2254. Petitioner challenges a 1998 conviction in Santa Clara County, so venue is
17 proper here. *See* 28 U.S.C. § 2241(d). Court records indicated that petitioner already filed a
18 habeas corpus petition in this court challenging the same conviction. *See Nguyen v. Veale*, Case
19 No. 06-cv-4198-MJJ. Petitioner's prior case was dismissed with prejudice as barred by the statute
20 of limitations. The present case appeared to be a successive petition, therefore the court ordered
21 petitioner to show cause why this case should not be dismissed. (Doc. 8.) Petitioner has filed a
22 response. (Doc. 9.)

23 "A claim presented in a second or successive habeas corpus application under section
24 2254 that was not presented in a prior application shall be dismissed." 28 U.S.C. § 2244(b)(2).
This is the case unless,

25 (A) the applicant shows that the claim relies on a new rule of
26 constitutional law, made retroactive to cases on collateral review by
27 the Supreme Court, that was previously unavailable; or
28 (B) (i) the factual predicate for the claim could not have been
discovered previously through the exercise of due diligence; and
(ii) the facts underlying the claim, if proven and viewed in
light of the evidence as a whole, would be sufficient to establish by

1 clear and convincing evidence that, but for constitutional error, no
2 reasonable factfinder would have found the applicant guilty of the
3 underlying offense.

4 28 U.S.C. § 2244(b)(2).

5 “Before a second or successive application permitted by this section is filed in the district
6 court, the applicant shall move in the appropriate court of appeals for an order authorizing the
7 district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). Petitioner has submitted a
8 response but has failed to demonstrate he received authorization to file a new petition. The
9 case will therefore be dismissed. If petitioner obtains permission from the Ninth Circuit he may
10 refile this case.

CONCLUSION

11 The case is **DISMISSED** and a certificate of appealability is **DENIED**.

12 **IT IS SO ORDERED.**

13 Dated: December 16, 2016

14 
15 MANDOR J. VADAS
16 United States Magistrate Judge